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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th June, 2024

No. 13/2/127-HII(2)-2024/9062.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **82/2020** dated **22.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PUSHPA, H. No. 18, 1ST FLOOR, VILLAGE JUJHAR NAGAR, DISTRICT MOHALI.
(Workman)

AND

THE DIRECTOR, TREASURY & ACCOUNTS HARYANA, 30 BAYS BUILDING, SECTOR 17,
CHANDIGARH. (Management)

AWARD

1. Pushpa, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Peon on 01.12.2015. The workman remained in the continuous and uninterrupted employment up to 13.01.2020 when her services were illegally & wrongfully terminated by refusing of work. At the time of termination the workman was drawing ₹ 7,000/- per month as wages for 4 hours duties. Earlier at the time of appointment the duty hours of the workman were from 9:00 A.M. to 8:00P.M. but she was shown as part time worker. The total wages paid to workman per month were ₹ 8,590-00 but in the record of the management the wages of the workman were shown ₹ 4,290/-per month. The equal amount i.e. ₹ 4,295/-was

to be credited in the bank account of the Sh. Chotte Singh, the husband of the workman, who was not an employee of the Treasury & Accounts Haryana. The matter was brought to the notice of the authorities, who informed that it is only a formality and it will not affect the wages and duty hours of the workman. Earlier also the services of the workman were illegally and wrongfully terminated on 01.07.2017. The workman raised an industrial dispute for her reinstatement and served upon the management a demand notice dated 07.12.2017. The management neither took the workman back on duty nor replied the demand notice. The

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Assistant Labour Commissioner-cum-Conciliation Officer, U.T.Chandigarh was requested for his intervention and with his active intervention the workman was taken back on job with continuity of service and without back wages. Since the day the workman was reinstated the management started harassing the workman on one pretext or the other. The workman was started treating as part time worker without any justified reason. The workman have been regularly asking the management that she should be treated as full time worker and be paid accordingly but no action was taken in this regard. The workman then made a complaint dated 06.12.2018 with the Labour Inspector, U.T.Chandigarh in this regard. The management without any justified reason started withholding wages of the workman for months together, whereas the wages of all the other staff was released month-wise. The workman lodged a complaint dated 20.06.2019 with the Labour Inspector U.T.Chandigarh in this regard. The management while appearing before the Labour Inspector produced a letter dated 09.05.2019 in which the management stated that there are 11 part time Sweepers/workers working in the department. The wages of all the workers except the workman (Mrs. Pushpa) has been paid. The wages for the month of April, 2019 were not paid to workman (Mrs. Pushpa) because there was no sanction for that. Similarly in the list dated 03.06.2019 submitted before the Labour Inspector, the name of the workman (Mrs. Pushpa) was missing and not sent for release of wages for the month of May, 2019. The management could not justify that why the workman (Mrs. Pushpa) was treated as part time worker instead of full time worker. The management failed to produce appointment letter of part time worker issued to workman despite the regular direction of the Labour Inspector, U.T.Chandigarh. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For her reinstatement the workman served upon the management a demand notice dated 14.01.2019. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T.Chandigarh was requested for his intervention but no settlement could be made possible within the stipulated period. The workman remained unemployed during the period i.e. from the date of termination to till date. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with full back wages, with continuity of service, with all attendant benefits and without any change in her service condition. The management may be directed to treat the workman as full time worker and the arrear of less paid wages be paid to her.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing amended written statement dated 02.02.2023 filed on 03.02.2023 wherein preliminary submissions are made that neither the claimant-workman is a 'workman' under Section 2(s) of the ID Act nor the Treasuries & Accounts Department, Haryana is covered under the definition of 'industry' as defined under Section 2(j) of the ID Act. The Treasuries & Accounts Department, Haryana is performing sovereign functions of the State Government. The main function of the department is to disburse retiral benefits to the retiree of the State Government and monthly salary and allowances to the working Government employees as per their entitlement and keep a vigilant eye on the Government exchequer and thus, does not fall within the definition of 'industry' as contained in Section 2(j) of the ID Act. Hence, the present demand notice is not maintainable. In this regard, the answering management is relying on a judgment dated 03.08.2022 passed by Hon'ble Supreme Court of India in the case of State of Haryana & others Versus Roshni Devi whereby the Hon'ble Apex Court has set aside the Award of Learned Labour Court, order of Hon'ble Single Judge and Hon'ble DB of the Punjab & Haryana High Court whereby respondent/Smt. Roshni Devi a similar situated employee was granted relief as claimed by the claimant-workman in the present case. The Hon'ble Apex Court observed that Labour Department Haryana is not covered under the definition of 'industry' and the management therein was not a 'workman' under ID Act. In view of the above judgment, this Hon'ble Court has no jurisdiction to adjudicate the present matter. The claimant-workman has no locus standi to file the present claim statement against the answering management. The claim statement is not maintainable in the present form before this Court. The claimant-workman has no cause of action. The claimant-workman has not approached this Court with clean hands and suppressed the real and material facts. The brief facts of the case are that Smt. Pushpa was engaged initially as part time Peon on 01.12.2015 for a duration of four hours per day for the period of six months which was extended from time to time, as per need, at the rates fixed by the

Deputy Commissioner, Chandigarh from time to time and finally the same was extended upto 30.06.2017 by the Competent Authority. Thereafter, the services of the claimant-workman as part time Peon were dispensed with vide office order dated 30.06.2017. She has worked as such during the period she remained engaged as part time Peon for four hours per day for which she has been paid regularly at the rates fixed by the Deputy Commissioner, Chandigarh for such part time workers. Hence, she is not entitled for any relief as alleged in the claim statement. The claimant-workman served a demand notice dated 07.12.2017 against her termination order praying therein for reinstatement in service as Peon. The official of the department appeared before the Assistant Labour Commissioner-cum-Conciliation Officer on the date fixed i.e. 27.02.2018, who verbally directed the office of answering management to get re-engaged the said claimant-workman Smt. Pushpa as part time Peon without back wages. From this, it is clear that Learned Assistant Labour Commissioner was convinced that the matter was not maintainable before him as neither the claimant is a 'workman' under Section 2(s) of the ID Act nor the Treasuries & Accounts Department, Haryana is covered under the definition of 'industry' as defined under section 2(j) of the ID Act and therefore, no written order was made despite conciliation proceeding were concluded. In compliance of the verbal mutual agreement dated 27.02.2018 arrived at between the claimant-workman and the answering management, the claimant-workman was reinstated as part time Peon w.e.f. 05.03.2018 with continuity of service but without back wages. However, despite the aforesaid agreed terms, the claimant did not join the department and herself violated the aforesaid agreement. Thereafter, the claimant was again requested to join the department immediately vide letter 22.03.2018. Thereafter, the claimant-workman submitted her joining on 19.04.2018. The claimant-workman Smt. Pushpa again filed a complaint on dated 06.12.2018 against the answering management in the office of Labour Inspector, U.T. Chandigarh requesting to intervene into the matter and advice the management to treat her as full time worker from the date she was reinstated. The answering management filed reply before Labour Inspector. Thereafter, the claimant-workman again moved a complaint vide dated 08.08.2019 before Learned Assistant Labour Commissioner, U.T. Chandigarh regarding non-payment of wages to her as full time worker. The department had replied the said complaint on 11.09.2019. The claimant-workman was reinstated as part time Peon for a spell of 4 hours per day only and it is also submitted that the management is only competent for re-engagement for part time work for duration of 4 hours under Sr. No. 14 of Rule 19.06 Punjab Financial Rules Volume - I, so the claimant-workman cannot be treated as fulltime worker as well as not liable to be paid full remuneration for the same. The answering management has already paid wages to the claimant-workman for the period she worked in the department i.e. upto 30.11.2019. The claimant is harassing and humiliating the answering management by filing false complaints time and again, hence the claimant-workman is not entitled to any relief as alleged in the complaints.

4. On merits, it is admitted that the claimant-workman was engaged on 01.12.2015 and remained in service upto 30.06.2017. In May, 2017 the claimant-workman made a verbal request to the Competent Authority that due to some domestic reasons she is unable to do the work as part time Peon and further considering her verbal request the period was finally extended as part time Peon upto 30.06.2017 by the Competent Authority. It is denied for want of knowledge that refusal of work, which amounts to termination is retrenchment under Section 2(oo) of the ID Act and management has violated Section 25-F of the ID Act. Further averments made in preliminary submissions are reiterated. Remaining averments of the claim statement are denied as wrong. Prayer is made that the claim statement may be dismissed.

5. The workman filed replication, wherein the contents of amended written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 24.07.2023 and additional issue No.1-A was framed vide order dated 04.04.2024 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW

1A Whether jurisdiction of the present Court is barred ? OPM

2. Whether claimant-workman does not fall within the definition of the 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 ? OPM
3. Whether the management does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act ? OPM
4. Relief.

7. In evidence, workman Pushpa examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 15.12.2023 workman closed her evidence in affirmative. In cross-examination, MW1 was put the copy of bank account ledger of Chotte Singh's account No.115110100024140 maintained with Canara Bank, Sector 33-B, Chandigarh for the period 24.11.2015 to 07.07.2017 vide Exhibit 'W1'.

8. On the other hand, management examined MW1 Suman Sharma - Superintendent, O/o Haryana Treasury & Accounts Department, Haryana, who tendered her affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'M1' to Exhibit 'M8'.

Exhibit 'M1' is complaint letter dated 06.12.2018.

Exhibit 'M2' is sanction order dated 06.11.2019.

Exhibit 'M3' is extract of Punjab Financial Rules Volume - I (Haryana State).

Exhibit 'M4' is reply dated 10.04.2019 filed by the management before the Labour Inspector, U.T, Chandigarh.

Exhibit 'M5' is letter dated 27.11.2019 addressed from Director Treasury & Accounts, Haryana to workman.

Exhibit 'M6' is letter dated 10.09.2019 addressed from Director Treasury & Accounts, Haryana to the Assistant Labour Commissioner, U.T, Chandigarh.

Exhibit 'M7' is order dated 31.01.2019.

Exhibit 'M8' is order dated 09.03.2019.

9. During cross-examination MW1 brought into evidence photocopy of documents i.e. the record of wages of part-time workers for the period year 2017-18 (consisting of Pages No.1 to 77 along with forwarding letter) vide Exhibit 'M9'.

10. On 22.03.2024 Learned ADA for the management closed oral evidence and on 10.04.2024 closed documentary evidence on behalf of the management.

11. I have heard arguments of Learned Representative for the workman and Learned ADA for the management and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

12. Onus to prove this issue is on the workman.
13. Under this issue, workman Pushpa examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim application in toto which are not reproduced here for the sake of brevity.

14. On the other hand, management-department examined MW1 Suman Sharma - Superintendent of Haryana Treasury and Accounts Department, who vide her affidavit Exhibit 'MW1/A' deposed that she is working in the office of the Director Treasuries & Accounts Department, Haryana Chandigarh on the post of Superintendent. She is well acquainted with the facts of the present case and giving this statement in her official capacity based on official record. Neither the claimant is a 'workman' under Section 2(s) of the Industrial Dispute Act 1947, nor the Treasuries and Accounts Department, Haryana is covered under the definition of 'industry' as defined under Section 2(j) of the Act ibid. The Department is performing sovereign functions of the State Government. The main function of the department is to disburse retiral benefits to the retiree of the State Government and monthly salary and allowances to the working Government employee as per their entitlement and keep a vigilant eye on the Government exchequer. The department is not doing any activity of business, profession, manufacturing, sale or purchase for profit etc. Smt. Pushpa was engaged initially as part time Peon on 01.12.2015 for a duration of four hours per day for the period of six months which was extended from time to time as per need at the rates fixed by the Deputy Commissioner, Chandigarh from time to time and finally the same was extended upto 30.06.2017 by the competent authority. Thereafter, the services of the claimant as part time peon were dispensed with vide office order dated 30.06.2017 on joining of regular Peon in the Department. MW1 further deposed that she (workman) has worked as such during the period she remained engaged as part time Peon for four hours per day for which the workman has been paid regularly at the rates fixed by the Deputy Commissioner, Chandigarh for such part time workers. MW1 further deposed that she (deponent) does not know where she (workman) was working after this four hours period and she (deponent) have never seen her (workman) in office after the said period of four hours daily. The claimant served a Demand Notice dated 07.12.2017 against her termination order praying therein for reinstatement in service as Peon. The official of this department appeared before the said Ld. Officer on the date fix i.e. 27.02.2018 and Learned Assistant Labour Commissioner-cum-Conciliation Officer verbally directed the office to get re-engaged the said claimant Smt. Pushpa as part time Peon without back wages. From this, it is clear that Learned Assistant Labour Commissioner was convinced that the matter was not maintainable before him as neither the claimant is a 'workman' under section 2(s) of the ID Act nor the Treasuries and Accounts Department, Haryana is covered under the definition of 'industry' as defined under section 2(j) of the Act ibid and therefore, no written order was made despite conciliation proceeding were concluded. In compliance of the verbal mutual agreement dated 27.02.2018, the claimant was reinstated as part time Peon w.e.f. 05.03.2018 with continuity of service but without back wages. However, despite the aforesaid agreed terms, the claimant did not join the department and thereby violated the aforesaid agreement herself. Thereafter, the claimant was again requested to join the department immediately vide letter 22.03.2018. Thereafter, the claimant submitted her joining on 19.04.2018. During this period, she had never asked for wages at the rate of full time worker. It was first time when the claimant Smt. Pushpa filed a complaint on 06.12.2018 in the office of Labour Inspector, U.T. Chandigarh requesting him to direct the Department to treat her as full time worker from the date she was reinstated. The claimant was reinstated as part time Peon for a spell of 4 hours per day only and it is also submitted that the respondent is only competent for engagement of part time employee for duration of 4 hours only under Sr. No. 14 of Rule 19.06 of Punjab Financial Rules Volume-I. The department filed reply before Labour Inspector and denied the same. Thereafter, the claimant again moved a complaint dated 08.08.2019 before Learned Assistant Labour Commissioner, U.T. Chandigarh regarding non-payment of wages to her as full time worker. The department had replied the said complaint on 11.09.2019 and denied the same being the claimant not entitled. The answering department has already paid wages to the claimant for the whole period she worked in the department i.e. up to 30.11.2019. Her part time services were dispensed with on joining regular that employee peon in the department. MW1 supported her oral version with documents Exhibit 'M1' to Exhibit 'M9'.

15. From the oral as well as documentary evidence led by the parties, it come out that undisputedly workman was appointed was Peon by the management-department on 01.12.2015. The workman has alleged

that from the date of appointment remained in continuous employment of the management-department up to 13.01.2020 whereas the management has alleged that there was no extension to the employment of the workman after 30.11.2019.

16. It is argued by Learned Representative for the workman that initially the workman was shown as Part-time worker. Earlier at the time of appointment the duty hours of the workman were 9:00 A.M. to 8:00 P.M. but she was shown part-time worker. Total wages paid to the workman were ₹ 8,590/- per month but in record the management had shown payment of monthly wages of ₹ 4,290/- to the workman and the equal amount of ₹ 4,290/- was used to be credited in the bank account of workman's husband Chotte Singh. The said Chotte Singh was never in the employment of the management-department. The matter was brought to the notice of the authorities, who informed that it is a merely a formality and will be affect the wages and duty hours of the workman. On the other hand, Learned ADA for the management argued that workman under serial No.14 of Rule 19.6 Punjab Financial Rules - Volume - I (Haryana First Amendment, 2006) was engaged initially as a part time Peon on 01.12.2015 for a duration of 4 hours per day for period of six months which was extended from time to time.

17. The argument advanced by Learned Representative for the workman that the workman was actually working for 8 hours a day as full time worker on monthly salary of ₹ 8,590/- is not supported with any documentary evidence. To the contrary the office record produced into evidence by the management would prove that workman Pushpa was actually working as a part time employee for 4 hours per day on monthly salary of ₹ 4,290/- .There is no evidence of the workman to prove that the office record maintained by the management-department is fake. Under Section 92 of the Indian Evidence Act, in case of conflict between the oral and documentary evidence, it is the documentary evidence that shall prevail over the oral evidence. From Exhibit 'M3' it is proved that Head of the Departments are competent to engage up to 4 hours part time Sweeper, Waterman, Gardener etc. chargeable to contingencies having full powers at the rates fixed by the Deputy Commissioner, as per policy of Government of Haryana. Thus, in view of Exhibit 'M3' Head of the Department, Treasury & Accounts, Haryana is competent to engage part time Peon for 4 hours only and is incompetent to engage full time Peon. Secondly, from the facts mentioned in the demand notice as well as claim statement it appears that the workman Pushpa was working in the office of management. When put to cross-examination AW1 Pushpa introduced a new fact by making volunteer statement that she was not sent to the office for doing the work of Office Peon but she was called at the residence of Sunil Saran for doing the household work from 9:00 A.M. to 10:30 P.M. In the demand notice dated 14.01.2019, claim statement and affidavit Exhibit 'AW1/A' workman has alleged that she was performing duty from 9:00 A.M. to 8:00 P.M. whereas in cross-examination workman in a self-contradictory manner stated that she was performing duty from 9:00 A.M. to 10:30 P.M. The above mentioned improved version of AW1 is not admissible into evidence and her contradictory statement is not worthy of credence. The workman's plea that she actually worked for 8 hours and was paid ₹ 8,590/- per month out of which 50% salary was deposited in the account of her husband is devoid of merits. In cross-examination of MW1 recorded on 09.02.2024 Learned Representative for the workman required production of record of wages of part time workers for the period year 2017-18 and MW1 replied that he can produce the record of wages of part time workers which was maintained in their office. The remaining cross-examination of MW1 was deferred on 09.02.2024 for producing the record of wages of part time workers for the period year 2017-18. MW1 when recalled for his remaining cross-examination on 05.03.2024 brought the photocopies of documents i.e. record of wages of part time workers for the period 2017-18 vide Exhibit 'M9' (consisting of page 1 to 77). The perusal of Exhibit 'M9' / details of payment made to part time workers during the year 2017-18 would reveal that at internal page No.18 (dated 13.01.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.11 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.16 (dated 13.02.2017) name of

Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.13 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.18 (dated 11.03.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.11 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.20 (dated 16.04.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.13 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.22 (dated 13.05.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.12 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.24 (dated 11.06.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.11 and they are paid monthly salary of ₹ 5,901/- each through bank transaction, at internal page No.26 (dated 17.07.2017) name of Pushpa is mentioned at serial No.5 and name of her husband Chote Singh is mentioned at serial No.12 and they are paid monthly salary of ₹ 5,949/- each through bank transaction. MW1 in her cross-examination admitted as correct that name of Chotte Singh is incorporated at serial No.13, 11, 13, 12, 11 & 12 of consolidated salary pay slips for the period January, 2017 paid on 03.02.2017; February, 2017 paid on 01.3.2017; March, 2017 paid on 06.04.2017; April, 2017 paid on 03.05.2017; May, 2017 paid on 01.06.2017 and June, 2017 paid on 07.07.2017 issued by the department as shown in Exhibit 'M9'. The above-mentioned record of pay would prove that the workman Pushpa and her husband Chotte Singh, both were employees of management department and both were paid their salary as per part time workers. In case, Chotte Singh did not work with the management-department then on receipt of monthly salary in his bank account why he did not raise any objection. Besides, the workman did not examine her husband Chotte Singh in the witness box to explain his position. Learned Representative for the workman argued that MW1 was not able to identify Chotte Singh as Chotte Singh never worked with the management-department. To support his argument Learned Representative for the workman referred the cross-examination of MW1 wherein she has stated that he has seen the person produced in the Court by Learned Representative for the workman alleging that he is Chotte Singh S/o Shayam Lal (copy of his aadhar card is Mark '1'). She does not identify the said person. To my opinion, non-identification of Chotte Singh by MW1 would not prove workman's plea that Chotte Singh never worked with the management-department. Before Chotte Singh was produced for the purpose of identification, MW1 in her cross-examination had stated that she cannot identify each and every part time employee of their department. In view of the aforesaid version of MW1, non-identification of Chotte Singh by the Superintendent of the management-department would not imply that Chotte Singh was not engaged as part time worker. Moreover, it is not necessary that Superintendent office must recognise every part time worker by face. MW1 has denied the suggestion as wrong that Chotte Singh never remained employee of Haryana Treasury & Accounts Department and he was paid salary without getting any work from him. MW1 admitted as correct that salary for the period for January, 2017 to June, 2017 was paid to Chotte Singh through bank transaction as shown in the copy of bank account ledger of account No.115110100024140 of Chotte Singh maintained with Canara Bank, Sector 33-B, Chandigarh for the period 24.11.2015 to 07.07.2017, copy of which is Exhibit 'W1' (consisting of 4 pages). MW1 denied the suggestion as wrong that salary was paid to Chotte Singh to deny the benefits of regularisation to workman Pushpa so that workman remains part time worker of the department. To my opinion, the suggestion put to a witness which is denied as wrong is no evidence, unless proved otherwise. In the present case, as discussed above, workman did not examine her husband Chotte Singh in the witness box to say that he was receiving salary regularly from the management department without doing any work.

18. In claim statement and affidavit Exhibit 'AW1/A' workman alleged that her services were illegally terminated on 01.07.2017. Thereafter, she raised industrial dispute and served demand notice dated 07.12.2017. The management neither took the claimant back on duty nor replied the demand notice. As far as termination on 01.07.2017 and raising of industrial dispute is concerned, MW1 in her cross-examination admitted the suggestion

as correct that the services of the workman were terminated on 01.07.2017. MW1 admitted as correct that after termination of service the workman raised demand notice before the ALC, Chandigarh. As far as taking the workman back on duty is concerned, MW1 admitted the suggestion as correct that during proceedings before ALC the workman was taken back into service without back wages. MW1 voluntarily stated that compliance of verbal order of ALC was made. MW1 denied the suggestion as wrong that there could be no verbal order, if the matter is pending before the ALC. The above-referred suggestion put to MW1 that there could be no verbal order and the workman's plea that the management did not take her back on duty is contrary to the admission made by the workman / AW1 in her cross-examination. Relevant portion of cross-examination of AW1 is reproduced as below :-

"I had raised demand notice before the Assistant Labour Commissioner, U.T. Chandigarh as my services were terminated from residence of Shri Sunil Saran. I had approached the Labour Inspector, U.T. Chandigarh. I was re-appointed on the verbal direction of Labour Inspector. I do not know the date when I rejoined my service. I was not paid salary for the period from the date of initial termination till the date of re-joining."

19. The above referred version of AW1 would support the management's plea that on termination of services on 01.07.2017, the workman raised demand notice and in conciliation proceedings before the Assistant Labour Commissioner, on verbal direction of Assistant Labour Commissioner the workman was taken up on duty w.e.f. 05.03.2018 and the workman submitted her joining on 19.04.2018. In para 10 of preliminary submissions of written statement the management pleaded that in compliance of verbal mutual agreement dated 27.02.2018 agreed between the claimant and department, the claimant was reinstated as part time Peon w.e.f. 05.03.2018 with continuity of service but without back wages. The claimant did not join the department. The claimant was again requested to join the department immediately vide letter dated 22.03.2018. Thereafter, claimant submitted her joining on 19.04.2018. In rejoinder dated 24.07.2023 the workman did not deny the fact that she re-joined the service with the management. In para 10 of rejoinder (reply to preliminary objections), workman admitted the facts to the extent of agreement and reinstatement with continuity of service, without back wages.

20. It is argued by Learned ADA for the management that workman has worked up to 30.11.2019 and she has been paid all her dues till 30.11.2019 as per time part worker. The aforesaid argument advanced by Learned ADA could not be controverted by the workman because MW1 in her cross-examination denied the suggestion as wrong that when workman filed a complaint of non-payment of salary to the Labour Inspector, U.T. Chandigarh, then the department paid salary to her. MW1 voluntarily stated that the workman had worked up to 30.11.2019 and she has been paid all the dues till 30.11.2019. MW1 denied the suggestion as wrong that out of 12 part time workers only payment of salary to the workman was delayed in May & June, 2019. To my opinion the above said suggestion put to MW1 would prove that the workman has received the salary of part time employment for the period up to 30.11.2019. There is no evidence that the workman performed duty beyond 30.11.2019. Exhibit 'M2' would prove that the sanction to the post of workman was up to 30.11.2019 only. Exhibit 'M2' is order dated 01.10.2019 passed by Shri Sunil Saran - Director General, Treasury & Accounts, Department of Haryana, Chandigarh, wherein it is ordered as below :-

"Sanction is hereby accorded under Sr. No.14 of rule 19.6 of Punjab Financial Rules, Volume- 1, Part-1 (Haryana 1st Amendment 2006) one part time Peon at the rate fixed by D.C. Chandigarh for the period i.e. 01.09.2019 to 30.11.2019. No further extension will be allowed after 30-11-2019."

21. MW1 in her cross-examination stated that she on behalf of the department is not ready to take back workman on duty as the department has already engaged regular employees. To substantiate the above-referred version of MW1 Learned ADA for the management referred order Exhibit 'M7' dated 31.01.2019 and order Exhibit 'M8' dated 09.03.2019 and argued that vide order Exhibit 'M7' on the recommendation of Haryana Staff Selection Commission vide letter No.HSSC/Confd/Recomm/2019/1147 dated 21.01.2019, four candidates were offered temporary appointment of Peon on regular basis in the office of Director General Treasury& Accounts, Department of Haryana, Chandigarh (Head Quarter) in level DL of the Pay Matrix level as specified in Haryana Civil Services (Revised Pay) Rules, 2016. Vide order Exhibit 'M8' on the recommendation of Haryana Staff Selection Commission vide letter No.HSSC/Confd/Recomm/2019/1147 dated 21.01.2019, one candidate was offered temporary appointment of Peon on regular basis in the office of Director General Treasury& Accounts, Department of Haryana, Chandigarh (Head Quarter) in level DL of the Pay Matrix level as specified in Haryana Civil Services (Revised Pay) Rules, 2016. Learned ADA for the management contended that in view of appointments made by virtue of Exhibit 'M7' & Exhibit 'M8', there was no requirement of grant of extension to the part time post of Peon on which the workman was employed and therefore, sanction is rightly not granted beyond 30.10.2019. On the other hand, it is contended by Learned Representative for the workman that since the workman has completed more than 240 days of continuous service in 12 calendar months preceding termination of her services, thus the workman fulfils the requirement of Section 25B of the ID Act and cannot be removed from service without compliance of Section 25F of the ID Act. It is further contended by Learned Representative for the workman that the management-department has neither issued any notice nor held any inquiry before termination of her services. To support his contention Learned Representative for the workman has referred cross-examination of MW1 wherein she stated that no charge sheet was issued and no inquiry was conducted against the workman. MW1 voluntarily stated that the workman was not regular employee, therefore, no requirement to issue any charge sheet or to hold any inquiry. To my opinion, the requirement to issue charge sheet or to hold inquiry arises when there is any allegation of misconduct against the workman. In the present case, there is no allegation of misconduct against the workman. The plea of the management is that the five regular employees were recruited after the selection process vide Exhibit 'M7' & Exhibit 'M8' and sanction to the post of Peon held by the workman was not granted beyond 30.11.2019, therefore, there is no violation of any provision of the ID Act. In order Exhibit 'M2' passed on 01.10.2019 it was clearly mentioned that no extension will be allowed after 30.11.2019. The knowledge of Exhibit 'M2' is not disputed by the workman. Dispensing with services of the workman by the management due to non-extension of sanction beyond 30.11.2019 accompanied with the fact that five regular employees were employed, the action of the management dispensing with the services of the workman on 30.11.2019 falls within the ambit of Section 2(oo)(bb) of the ID Act and therefore, Section 25F of the ID Act is not attracted. Hence, it is not a case of illegal retrenchment or termination.

22. Accordingly, this issue is decided against the workman and in favour of the management.

Issues No. 1-A, 2 & 3 :

23. All these issues are taken up together being interconnected and to avoid repetition of discussion. Onus to prove all these issues is on the management.

24. Learned ADA for the management by referring to the cross-examination of AW1; wherein she has stated that the management is a Government Department and she has not seen any shop or manufacturing unit or any kind of business in the department; contended that the department i.e. Director, Treasury & Accounts, Haryana does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act. Therefore, this Court has no jurisdiction to try and decide the present matter.

25. On the other hand, Learned Representative for the workman has argued that there is no evidence of the management to prove that the management-department is performing sovereign function of the State, therefore, the management department falls within the definition of 'industry' as defined under Section 2(j) of the Act.

26. An establishment can be taken out of the pale of industry only if it exercises inalienable Government functions. To my opinion, except the oral assertion of the management no evidence has come on record from which it could be inferred that the management is exercising sovereign functions of the State. Consequently, the management-department is 'industry' within the meaning of Section 2(j) of the ID Act.

27. As per management's own plea the workman was a part time worker performing the duty of Sweeper, which is a manual work and was paid salary of part time worker by the management. In order to ascertain whether the employee is a 'workman' or not it is required to be considered that the person is employed in an 'industry' for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman' as defined in Section 2(s) of the ID Act. In the present case, it is duly proved that the management falls in the definition of 'industry' under Section 2(j) of the ID Act. The workman is appointed by the management as part time worker. The workman is doing job of Sweeper with the management for a monthly salary of ₹ 4,290/-, which is paid by the management. Thus, the workman fulfils the requirement of Section 2(s) of the ID Act.

28. The workman has challenged the order of termination of her services by the management being illegal which falls within the ambit of Section 2A of the ID Act. Consequently, this Court is well within its jurisdiction to try & adjudicate the present industrial dispute reference.

29. Accordingly, all these issues are decided against the management and in favour of the workman.

Relief :

30. In the view of foregoing finding on the issue No.1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 22.04.2024.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 7th June, 2024

No. 13/2/128-HII(2)-2024/9064.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **10/2023** dated **23.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

CTU WORKER'S UNION, CHANDIGARH (REGD. & RECOGNIZED) THROUGH ITS PRESIDENT AND SECRETARY ON BEHALF OF SH. DAVINDER PAL - TG-II, CTU, CHANDIGARH (Workman)

AND

1. THE SECRETARY TRANSPORT, CTU, CHANDIGARH.
2. THE DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, U.T. CHANDIGARH. (Management)

AWARD

1. CTU Worker's Union, Chandigarh (*here-in-after referred "workers' union"*) has presented industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (*here-in-after in short called "ID Act"*).

2. Briefly stated the averments of claim application are that Davinder Pal - TG-II, CTU, Chandigarh (*here-in-after referred "workman"*) was on medical leave w.e.f. 30.10.2003 to 29.12.2003 because workman was not well and remained under treatment during the aforesaid period. Leave applications were duly supported with medical certificate. Leave of the workman was not denied at any point of time and he was not informed regarding the rejection of his leave. The General Manager, CTU passed an order on 05.05.2004 whereby General Manager has not considered his leave as medical leave rather treated the leave w.e.f. 30.10.2003 to 29.12.2003 as extra ordinary leave, without consent of the workman and without hearing the workman which action is illegal and against the law. The workman filed an appeal but the same was dismissed on 01.04.2005 by the Divisional Manager, CTU. Thereafter, workman filed review / second appeal before the Home Secretary, U.T. Chandigarh, who partly accepted the second appeal on 20.02.2006 and treated the period w.e.f. 23.12.2003 to 29.12.2003 and rest period was treated as extra ordinary leave. The order dated 05.05.2004 is a punishment order and General Manager was not competent authority to pass the same. The above action on part of the management is illegal because the workman was ill during the course of his employment, therefore, the workman applied for medical leave. As per provision of Punjab Civil Services Rules, Volume - I, Part - I, employee is entitled to medical leave with full salary for the period he remained under treatment. Medical leaves were in the balance in leave account of workman. By passing these illegal orders period from 30.10.2003 to 22.12.2003 have been forfeited for the purpose of pay, increments, seniority and pensionary benefits. The orders dated 05.05.2004, 01.05.2005 and 20.02.2006 are illegal and void and in violation of law of natural justice because no hearing was given to the workman before passing these orders. As per rules medical leave applied by employee cannot be changed to another kind of leave without consent of the employee. Further it is settled law that medical certificate cannot be rejected without opinion of CMO

and at the best employee is directed to get examined from CMO but no such procedure was applied in this case. The workman made several requests to withdraw the illegal orders dated 05.05.2004, 01.04.2005 and 20.02.2006 but all in vain. Hence, the workman raised the demand notice. Prayer is made that the reference may be accepted and the illegal orders dated 05.05.2004, 01.05.2005 and 20.02.2006 may be set aside and all the monetary benefits may be released to the workman along with interest @ 12% per annum which were withheld by virtue of these illegal orders.

3. On notice, management contested the claim statement by filing written statement / reply on 18.04.2023 wherein preliminary objections / submissions are made on the ground that in the judgment of Hon'ble Supreme Court (Seven Judges Bench) in case of Bangalore Water Works & Sewerage Board Versus A. Rajappa reported in 1978(2) SCC 213 it has been held that State Government Department is not an 'industry'. In the present case also, the workman was working with Chandigarh Transport Undertaking (CTU) of U.T. Chandigarh which is also State Government. In the claim statement, there is nothing which characterises that it is an industrial dispute. However, being the regular employee Group 'C' there is remedy available to challenge the orders of Appellate Authority before Hon'ble Central Administrative Tribunal, Chandigarh Bench. The management raised further objection that workman is guilty of misrepresenting the fact and of *suppicio veri* and *exprescio falsi* to the extent that the workman has completely suppressed true and material facts in the present statement of claim and as such workman has approached this Hon'ble Court with unclean hands and thus, the present demand notice deserves to be dismissed on this ground only. In the preliminary objections the management have referred judgment titled as Nedungadi Bank Limited Versus K. P. Madhavan Kutty reported in 2000(3) Vol. 75 All India Services Law Journal 22 (SC) and Pirthvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by the Hon'ble High Court of Himachal Pradesh. The management further submitted that true facts of the case are that the workman working as a Battery Attendant submitted a medical certificate which was obtained from private practitioner for grant of medical leave from 30.10.2003 to 08.11.2003 vide application dated 30.10.2003 and later on continued to send leave applications along with medical certificate obtained from private practitioner. The copies of medical certificate obtained from private practitioner are placed which were rejected by the General Manager, CTU - II vide its order dated 24.11.2003 and the same was duly informed to the workman vide their office letter No.3128/ECW/CTU-11/2003 dated 01.12.2003 with further directions to resume duties immediately or in case of sickness appear before PMO / CMO and submit his medical certificate to their office failing which further action will be taken against the workman under the provisions of rules. There is no procedural lapse or irregularity in passing of the impugned orders dated 05.05.2004, 01.04.2005 and 20.02.2006. The General Manager taking lenient view ordered to regularise the period of absence from 30.10.2003 to 29.12.2003 by treating the same as extra ordinary leave vide order dated 05.05.2004. The workman failed to comply with the above said directions of the competent authority and continued to apply for medical leave with the medical certificate obtained from private practitioner. On 20.12.2003 the workman applied for medical leave for the first time along with medical certificate issued by General Hospital, Sector 16 wherein rest of three days was advised i.e. from 23.12.2003 to 25.12.2003 and again on 26.12.2003 wherein rest for further four days were advised i.e. from 26.12.2003 to 29.12.2003 and on 30.12.2003 fitness certificate was issued by General Hospital, Sector 16, Chandigarh. After taking the lenient view, the General Manager ordered to regulate the period of absence from 30.10.2003 to 29.12.2003 by treating the same as extra ordinary leave vide order dated 05.05.2004. The workman preferred an appeal against the order dated 05.05.2004 which was duly considered and rejected by the Divisional Manager vide its order dated 01.04.2005 being aggrieved from the order dated 01.04.2005, the workman preferred an appeal before the Worthy Home Secretary, U.T. Chandigarh wherein after giving the due opportunity and personal hearing to the workman, the Appellate Authority vide its order dated 20.02.2006 accepted the appeal of the workman to the extent that the period from 23.12.2003 to 29.12.2003 will be treated as medical leave and the remaining period of absence will be treated as extra ordinary leave. The order dated 20.02.2006 is detailed speaking order which has been rightly passed by the Appellate Authority and well within the right to pass the said order.

4. Further on merits, it is stated that office of General Manager, Chandigarh Transport Undertaking - II, Chandigarh vide letter Memo No.3128/ECW/CTU-II/2003 dated 01.12.2003 informed the workman regarding absence from Government duty. The contents of said letters are reproduced as under :-

"You are hereby informed that your leave application w.e.f. 30.10.2003 to 27.11.2003 has been rejected and being treated absent from Govt. duty w.e.f. 30.10.2003 onwards. You are, therefore, directed to resume duty immediately or in case of sickness appear before PMO/CMO and submit your medical certificate to this office, failing which further action will be taken against you under the provisions of Rules."

5. It is a matter of record that the workman applied for leave on medical grounds and the application were supported by medical certificates. The General Manager, CTU - II directed the workman to appear before CMO / PMO rightly well within the preview of Rule 8.13(b) of Punjab Civil Services Rules which are applicable to all the regular employees of CTU and reads as under :-

"Rule 8.13(b) The Authority Competent to sanction leave may, at its discretion, secure a second medical opinion by requesting the Principal, Medical Officer or assistant to the Civil Surgeon to have the applicant examined. If it decides to do so, it must arrange for the second examination to be made at the earliest possible date after the date on which the first medical opinion was given."

6. Before passing the order dated 05.05.2004, the General Manager directed the workman to appear before PMO / CMO and submit the medical certificate to their office failing which action will be taken against the workman under the provisions of Rules vide its letter dated 01.12.2003. The workman failed to comply with the above orders which force the General Manager to pass the orders dated 05.05.2004 which is strictly under the provisions of Rules. The General Manager, CTU is fully competent to pass the order dated 05.05.2004 being In-charge and reporting authority of the concerned depots of CTU, Chandigarh. The provisions of Punjab Civil Services Rules are admitted being matter of record. The Divisional Manager-cum-Director Transport, U.T. Chandigarh afforded personal hearing to the workman on the same day i.e. 01.04.2005 before passing the order dated 01.04.2005 and the Appellate Authority afforded the personal hearing to the workman on 28.12.2005 before passing the order dated 20.02.2006. It is stated that the orders dated 05.05.2004, 01.04.2005 and 20.02.2006 are justified and passed after giving workman proper opportunity of hearing. Further similar stand is taken as taken in the preliminary objections / submissions. Rest of the averments of claim statement are denied as wrong. Prayer is made that statement of claim may be dismissed being devoid of any merits and time barred.

7. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 22.05.2023 :-

1. Whether the orders dated 05.05.2004, 01.04.2005 and 20.02.2006 are illegal, if so, its effect ? OPW
2. Whether the claim statement is time barred ? OPM
3. Whether the management No.1 & 2 does not fall within the definition of 'industry' as defined in Section 2(j) of the ID Act ? OPM
4. Relief.

8. In evidence, workers' union examined workman Davinder Pal as AW1, who tendered his affidavit Exhibit 'AW1/A'. On 03.01.2024 Learned Representative for the workers' union closed the evidence in affirmative on behalf of the workers' union.

9. On the other hand, management examined MW1 Ekta - Junior Assistant, CTU, Plot No.701, Industrial Area, Phase - I, Chandigarh, Office of Divisional Manager, CTU & Director Transport, U.T. Chandigarh, who tendered into evidence her affidavit Exhibit 'MW1/A' along with attested copy of documents Exhibit 'M1' to 'M7'.

Exhibit 'M1' is leave application dated 30.10.2003.

Exhibit 'M2' is medical certificate dated 30.10.2003 issued by SV Clinic & Nursing Home.

Exhibit 'M3' is medical certificate dated 06.12.2003 issued by SV Clinic & Nursing Home.

Exhibit 'M4' is OPD card of General Hospital, Sector 16, Chandigarh (colly. Page 1 & 2).

Exhibit 'M5' is order dated 01.04.2005 issued by Arun Sekhri, PCS, Divisional Manager, CTU & Director Transport, U.T. Chandigarh.

Exhibit 'M6' is Memo No.3128/ECW/CTU-II/2003 dated 01.12.2003 issued by General Manager, CTU-II, Chandigarh.

Exhibit 'M7' is order bearing endorsement No.888/ECW/CTU-II/2006 dated 07.07.2006.

10. It is pertinent to mention here that document Exhibit 'M1' was put by Learned Law Officer to AW1 in his cross-examination. On 22.03.2024 Learned Law Officer closed oral evidence and on 22.04.2024 Learned Law Officer closed documentary evidence on behalf of the management.

11. I have heard the arguments of Learned Representative for workers' union and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as under :-

Issue No. 1 :

12. Onus to prove this issue is on the workers' union / workman.

13. Under this issue, workers' union examined workman Devinder Pal as AW1, who vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

14. On the other hand, Learned Law Officer referred testimony of MW1 Ekta - Junior Assistant, CTU, who vide her affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement / reply, which are not reproduced here in order to avoid repetition. MW1 supported her oral version with documents Exhibit 'M1' to Exhibit 'M7'.

15. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly workman the workman applied leave on medical grounds for the period w.e.f. 30.10.2003 to 29.12.2003 supported with medical certificate of private practitioner. In this regard, AW1 in his cross-examination admitted as correct that on 30.10.2003 he submitted medical certificate of private practitioner for availing the medical leave w.e.f. 30.10.2003 to 08.11.2003. The facts remained admitted between the parties, the General Manager, CTU vide its order dated 05.05.2004 did not consider the leave for the period w.e.f. 30.10.2003 to 29.12.2003 as medical leave and treated the same as extra ordinary leave. The workman filed an appeal against the order dated 05.05.2004 to the Divisional Manager, CTU, Chandigarh, who dismissed the appeal vide order dated 01.04.2005. Thereafter, workman filed second appeal before the Home Secretary, U.T. Chandigarh, who vide its order dated 20.02.2006 partly accepted the appeal whereby period w.e.f. 23.12.2003 to 29.12.2003

was ordered to be treated as medical leave and the remaining period from 30.10.2003 to 22.12.2003 was ordered to be treated as extra ordinary leave. The above mentioned facts would transpire that out of leave period i.e. 30.10.2003 to 29.12.2003, the period 23.12.2003 to 29.12.2003 has been allowed to be treated as medical leave by the Home Secretary, U.T. Chandigarh as per order dated 20.02.2006. Now the disputed leave period is from 30.10.2003 to 22.12.2003 which has been treated as extra ordinary leave. It is undeniable fact that for the period which is treated as extra ordinary leave the concerned employee is not entitled to the monetary benefits such as salary, increment and pensionary benefits.

16. Learned Representative for the workers' union argued that period from 30.10.2003 to 22.12.2003 have been wrongly rejected by not considering the same as medical leave. The leave application submitted by the workman was supported with medical certificate of registered medical practitioner. Under Note 2 of Rule 8.13 of Punjab Civil Service Rules, Volume - I, Part - I, a registered medical practitioner means a medical practitioner registered under the provisions of the Punjab Medical Registration Act, 1916 and includes a medical practitioner - (i) whose name appears in the latest annual medical list: and (ii) who having been registered after the closing of the latest medical list, certifies his registration number. It is further argued by Learned Representative for the workers' union that under Rule 8.13 (a) of Punjab Civil Services Rules, every application for leave on medical grounds made by a Government employee shall be accompanied by a medical certificate given by a registered medical practitioner or a Vaid or Hakim or a Homoeopathic Practitioner defining as nearly as possible the nature and probable duration of the illness or by a request for the issue of a requisition for examination by a medical officer of the Government. Learned Representative for the workers' union argued that in the present case, admittedly leave application for grant of medical leave applied by the workman was supported with the medical certificate issued by the registered medical practitioner and as per Rule 8.13(a) of Punjab Civil Service Rules, it is not mandatory to supply a medical certificate issued from a Medial Officer of the Government only. On the other hand, Learned Law Officer for the management argued that Rule 8.13(b) of Punjab Civil Service Rules, provides that the competent authority to sanction the leave at its discretion secure a second medical opinion by requesting the Principal Medical Officer or assistant to the Civil Surgeon to have the applicant examined. In the present case, the management of CTU by issuing letter Exhibit 'M6' required the workman to appear before the P.M.O. / C.M.O. and submit his medical certificate to their office, failing which further action will be taken against him under the provisions of Rules. It is further argued by Learned Law Officer that the workman did not comply with order Exhibit 'M6' and failed to get himself examined from P.M.O. / C.M.O. and failed to submit the medical certificate from a Government Hospital. Therefore, the medical leave of the workman has been rightly declined and rightly treated as extra ordinary leave. To my opinion, the arguments advanced by Learned Law Officer carry force because admittedly the services of the workman are governed by the Punjab Civil Services Rules. Under Rule 8.13(a) of Punjab Civil Service Rules, Volume - I, Part - I, no doubt the medical certificate issued by a private registered medical practitioner is admissible. But under Rule 8.13(b) of Punjab Civil Service Rules, Volume - I, Part - I, the authority competent to sanction leave may exercise its discretion to secure a second medical opinion from the P.M.O. / C.M.O. for the purpose of sanction of leave. In the present case, by issuing letter Exhibit 'M6', in view of Rule 8.13(b) of Punjab Civil Service Rules, Volume - I, Part - I, the competent authority i.e. General Manager, CTU - II, Chandigarh required the workman to get himself examined from P.M.O. / C.M.O. and submit his medical certificate. The careful scrutiny of letter Exhibit 'M6' would show that General Manager, Chandigarh Transport Undertaking - II, Chandigarh after rejection of leave for the period w.e.f. 30.10.2003 to 27.11.2003 exercised the discretion under Rule 8.13(b) of Punjab Civil Service Rules, Volume - I, Part - I. Whereas the spirit of Rule 8.13(b) of Punjab Civil Service Rules, Volume - I, Part - I is to secure the second medical opinion of P.M.O. / C.M.O. before deciding the leave application on medical grounds. If the leave application is declined prior to obtaining the second medical opinion then the medical examination subsequently from P.M.O. / C.M.O. would become infructuous. The General Manager, CTU - II, Chandigarh was required to wait for the second medical opinion before rejecting the leave application of the workman. For better appreciation the contents of letter No.3128/ECW/CTU-II/2003 dated 01.12.2003 issued by

General Manager, CTU - II, Chandigarh to Devinder Pal - Battery Attendant, CTU - II, Chandigarh / Exhibit 'M6' are reproduced as below :-

"You are hereby informed that your leave application w.e.f. 30.10.2003 to 27.11.2003 have been rejected and being treated absent from Govt. duty w.e.f. 30.10.2003 onwards. You are, therefore, directed to resume duty immediately or in case of sickness appear before P.M.O./C.M.O. and submit your medical certificate to this office, failing which further action will be taken against you under the Provisions of Rules."

17. The contents of letter Exhibit 'M6' referred above, leaves no room for doubt to hold that before issuing direction to the workman to get himself examined from P.M.O. / C.M.O. or Government hospital, his leave application was declined.

18. In view of the reasons recorded above, the order dated 05.05.2004 passed by the General Manager, CTU, Chandigarh; order dated 01.04.2005 passed by the Divisional Manager, CTU, Chandigarh declining the leave as medical leave for the period w.e.f. 30.10.2003 to 29.12.2003 and order dated 20.02.2006 passed by Home Secretary, U.T. Chandigarh to the extent of declining the leave for the period w.e.f. 30.10.2023 to 22.12.2023 as medical leave, are unjustified and illegal and there is no reason to disbelieve the medical certificate issued by private registered medical practitioner and consequently, the same are set aside. The workman is held entitled to the monetary benefits which are withheld on the basis above said orders.

19. Accordingly, this issue is decided in favour of the workers' union / workman and against the management.

Issue No. 2 :

20. Onus to prove this issue is on the management.

21. Learned Law Officer argued that the present claim statement is highly time barred. The workers' union have challenged the orders dated 05.05.2004, 01.04.2005 and 20.02.2006 by raising demand notice dated 14.06.2018 after a lapse of about 12 years. On the other hand, Learned Representative for workers' union has argued that in view of the *judgment dated 18.05.2022 of Hon'ble Supreme Court of India in Civil Appeal No.4134 of 2022 arising out of SLP (Civil) No.2946 of 2020 titled as Rushibhai Jagdishchandra Pathak Versus Bhavnagar Municipal Corporation* decided with Civil Appeal No.4136 of 2022 & others, since the orders under challenge have visited the employee / workman with civil consequences, thus the workman has a recurring cause of action and the bar of limitation does not apply. To my opinion, the judgment of Hon'ble Supreme Court in *Civil Appeal No.4134 of 2022 referred (supra)* is applicable to the facts of present case to an extent and the provisions of the Limitation Act do not apply.

22. Accordingly, this issue is decided against the management and in favour of the workers' union / workman.

Issue No. 3 :

23. Onus to prove this issue is on the management.

24. Learned Law Officer for the management argued that the department of CTU is a Government Department and does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act. Therefore, this Court has no jurisdiction to try and decide the present matter.

25. To my opinion, the aforesaid argument advanced by Learned Law Officer is devoid of merits because the Government Department cannot be excluded from the definition of 'industry' unless it is proved that it is performing sovereign function of the State. In the present case, it is neither pleaded nor proved that the management is performing sovereign function of the State. Consequently, the management-department is 'industry' within the meaning of Section 2(j) of the ID Act. Since the management department falls within the definition of the 'industry' under Section 2(j) of the ID Act, thus, the workman may choose to seek remedy before the Industrial Tribunal & Labour Court.

26. Accordingly, this issue is decided against the management and in favour of the workers' union / workman.

Relief :

27. In the view of foregoing finding on the issues above, this industrial dispute is allowed. Order dated 05.05.2004 passed by the General Manager, CTU, Chandigarh; order dated 01.04.2005 passed by the Divisional Manager, CTU, Chandigarh declining the leave as medical leave for the period w.e.f. 30.10.2003 to 29.12.2003 and order dated 20.02.2006 passed by Home Secretary, U.T. Chandigarh to the extent of declining the leave for the period w.e.f. 30.10.2023 to 22.12.2023 as medical leave are set aside. The workman is held entitled to the monetary benefits which are withheld on the basis above said orders. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 23.04.2024.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Sumit Kumar, S/o Sh. Narender Kumar, House No. 360, Vikas Nagar, Mouli Jagran, Chandigarh, inform that in my documents my father name wrongly written as Narendra Kumar instead of Narender Kumar. My Father correct name is Narender Kumar.

[860-1]

I, Muskan, D/o Vijay Kumar Kansal, # 63, Vikas Nagar, Mauli Jagran, Chandigarh, have changed my name to Muskan Kansal.

[861-1]

I, Sawara, W/o Mr. Abdul Jabbar, R/o # 388, Industrial Area, Phase-II, Chandigarh, have changed my name to Sabra Begam.

[862-1]

I, Sheesh Ram, S/o Rishi Ram, # 2680A, Sector 27-C, Chandigarh, have changed my name to Shish Ram.

[863-1]

I, Naresh, S/o Anand Singh, # 1224, Deep Complex, Hallu Majra, Chandigarh, have changed my name to Naresh Kumar.

[864-1]

I, Pinki, W/o Sanjeev Kumar, R/o # 158, Sector 45, Burail, Chandigarh, declare that I have changed my name from Pinki to Vandana Devi.

[865-1]

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